IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 737 of 2000
With
CRIMINAL APPEAL No. 894 of 2000

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE
HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MUKTABEN W/O VINUBHAI HANSRAJ PATEL - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
THROUGH JAIL for Appellant(s) : 1,
MS NITA C BANKER for Appellant(s) : 1,
MR PRADIP D BHATE, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 12/06/2007

COMMON ORAL JUDGMENT
(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

These two appeals arise out of a judgment and order rendered by Sessions Court, Junagadh in Sessions Case No.125 of 1997 on June 28, 2000 recording conviction of the appellants in these appeals for the offence of murder of one Vinubhai Hansraj Patel – husband of accused no.2 – Muktaben. Both the accused persons came to be convicted under Section 302 read with Section 120-B read with Section 34 of I.P.C. and were ordered to undergo imprisonment for life. Original accused no.1 – Naranbhai Jhinabhai Dodiya was ordered to pay a fine of Rs.2,000/-, in default, to undergo imprisonment for a period of six months whereas original accused no.2 – Muktaben was ordered to pay a fine of Rs.500/-, in default, to undergo S.I. for one month. Additionally, original accused no.1 – Naranbhai was convicted under Section 135 of the Bombay Police Act but no separate sentence was awarded. Being aggrieved by the said judgment and order, original accused no.1 – Naranbhai has preferred Criminal

Appeal No.894 of 2000 whereas original accused no.2 – Muktaben – wife of Vinubhai Hansraj Patel has preferred Criminal Appeal No.737 of 2000. Since both the appeals arise out of the same judgment and order, they are heard together and are disposed of by this common judgment. For the sake of convenience, appellant Naranbhai Jhnabhai Dodiya is referred to as accused no.1 and appellant Muktaben – wife of Vinubhai Hansraj Patel is referred to as accused no.2 in this judgment.

2. As per the prosecution case, accused no.2 was married to deceased Vinubhai Hansraj Patel. She had two sons from the wedlock, (1) Rohit Vinubhai Patel, aged about 12 years at the time of incident and (2) Gautam Vinubhai Patel, aged about 8 years at the time of incident. It is further the case of the prosecution that accused no.2 developed illicit relations with accused no.1. This led to a disturbed marital life and the stage came when accused no.2 deserted her husband and started living in the company of accused no.1. At the intervention of relatives and social workers, in recent past of the incident, the accused no.2 came back to her matrimonial house and started living in company of

deceased Vinubhai Hansraj Patel.

2.1 It is the case of the prosecution further that on 18th December, 1996, accused no.2 and her husband alongwith two children went to Satadhar for fulfillment of a vow. Thereafter, at the instance of accused no.2, they moved towards Muni Ashram. On way to Muni Ashram, accused no.2 left company of the deceased and two children to attend nature's call. While she was away, accused no.1 came and had a quarrel with deceased Vinubhai. He ultimately attacked Vinubhai with a knife and inflicted multiple blows which proved to be fatal. It is the prosecution case further that the dead body was then removed and placed behind bushes. The accused no.2 alongwith her children came back to her house and on the way, warned the children not to disclose anything about the incident to anyone or else accused no.1 may behave in the same manner with them. When accused no.2 and children came back home, Hansraj Patel – father of the deceased, enquired about deceased Vinubhai and was told that he had left for Surat from Satadhar. Time went by and nothing happened. There was no news or communication from Vinubhai Hansraj Patel nor was there any anxiety shown by accused no.2

about absence of Vinubhai Hansraj Patel.

2.2 Parallel to the above happenings, on 19th December, 1996, a dead body was noticed by one Gordhanbhai Jivabhai Patel Kaachadiya and he lodged an F.I.R. with Visavadar Police Station and investigation started. During the course of investigation, it was found that the dead body was that of Vinubhai; that the two accused had illicit relations; that at the instance of accused no.2, the deceased was going towards Muni Ashram and that he was attacked by accused no.1 with a knife which was seen by Rohit Vinubhai Patel – his son. Accused no.2 and the two children were noticed leaving the place while the deceased was lying there dead injured. Ultimately, the police found that there was strong evidence, direct and circumstantial, to connect both the accused with the offence and, therefore, filed chargesheet in the Court of J.M.F.C., Visavadar who, in turn, committed the case to the Court of Sessions and Sessions Case No.125 of 1997 came to be registered. Charges were framed against both the accused persons at Exh.1. Both of them pleaded not guilty to the charge and came to be tried.

2.3 The Sessions Court, after considering the evidence led by the prosecution, came to the conclusion that the prosecution was successful in establishing charges against the appellants and, therefore, recorded the conviction and passed an order of sentence, as stated above.

3. Learned advocate Ms. Banker for both the appellants submitted that the prosecution case depends on deposition of only one eye-witness who is a child witness and, therefore, his deposition may not be the correct reproduction of facts that may have happened. Ms. Banker submitted that the deposition of eye-witness Rohit has to be weighed in light of the fact that he was aged just 12 years at the time of the incident; that when the incident occurred, he may have been terror-stricken; that he may have rested on imagination and, therefore, the deposition may not be given any weightage. It was also submitted by Ms. Banker that the child witness may have been prejudiced against the accused because of their alleged illicit relationship. It was also contended that this eye-witness has remained silent for about 3½ months although he claims to have seen the incident of murder of his own father and,

therefore, the deposition loses credibility. It was also submitted by Ms. Banker that the circumstances do not complete the chain of events to establish nexus between the accused and the crime. It was, therefore, submitted that the appeals may be allowed.

4. Learned APP Mr. Bhate appearing for the State has opposed the appeals. According to him, apart from the evidence of eye-witness Rohit, there are strong circumstances which establish the nexus between the accused and the offence. Mr. Bhate submitted that the evidence of Rohit reflects that he is a natural witness and his presence is natural at the place of incident and that he has stood the test of cross-examination and has remained unshaken. It was also contended that Rohit is the son of accused no.2 and has no reason to depose against his own mother and, therefore, evidence of eye-witness Rohit, by itself, is sufficient, according to Mr. Bhate, to confirm the conviction.

4.1 It was also contended by Mr. Bhate that there are several other circumstances duly proved by the prosecution namely, presence of accused no.2 at the place of incident in company of the deceased;

accused no.2 leaving company of the deceased under an excuse of attending nature's call and at that very time, accused no.1 attacking the deceased. Mr. Bhate submitted that if it would have been coincidence, the conduct of accused no.2 would have been different. She would not have silently left the place of incident leaving the dead body of the deceased behind nor would she have tried to misguide her father-in-law by saying that the deceased had gone to Surat for business purpose. Presence of accused no.2 is established not only through deposition of Rohit but also deposition of witnesses who have seen her at the time of incident, leaving the place and the dead body without taking any action. It was contended that even on way to home, she impressed upon her minor children not to disclose about anything to anyone and then after going home, she intimates her father-in-law that the deceased had gone to Surat for business work which was not a correct fact and which, by itself, reflects guilty conscience of accused no.2 and an attempt on her part to mislead her father-in-law. Accused no.2 has been identified before the Executive Magistrate by witness Pancha. The factum of strained relations between the deceased and accused no.2 and warm relations between accused no.1

and accused no.2 is properly established. Under the circumstances, Mr. Bhate submitted that the Trial Court has recorded conviction after considering all these factors and, therefore, the appeals may be dismissed.

5. We have examined the record and proceedings in light of the submissions made by rival sides. We find that in the case before us, the prosecution has led two-fold evidence, one in the form of deposition of Rohit Vinubhai Patel which is direct evidence of an eye-witness implicating accused no.1 with the actual incident and circumstances in form of conduct of accused no.2 to prove involvement of accused no.2 in the incident either as a conspirator or as a person sharing common intention with accused no.1 and acting in furtherance of that common intention. The second fold of evidence is in form of circumstances which lead to involvement of accused no.1 and accused no.2 in the incident and lend support to the version of eye-witness Rohit.

6. There has not been a challenge to the finding of the Trial Court that the deceased Vinubhai Hansraj Patel died a homicidal death. Still, we

propose to examine the evidence in this regard.

6.1 There is the evidence of eye-witness Rohit at Exh.18 which clearly indicates that the incident occurred at about 1600 hours on 18th December, 1996 on the way leading to Muni Ashram located near Satadhar. It is also stated by him in terms that accused no.2 went to attend nature's call and at that time, accused no.1 came there suddenly, picked up a quarrel with deceased Vinubhai and then inflicted multiple knife blows which resulted into death of the deceased.

6.2 There is evidence of Dr. Gopalbhai Kadvabhai at Exh.10 who had performed the post-mortem. The post-mortem notes are at Exh.13. Read collectively, these two pieces of evidence indicate that the deceased had suffered as many as 12 external injuries, out of which 7 were incised wounds, 2 were stab wounds and rest were abrasions. The cause of death is indicated to be haemorrhagic shock due to injury to heart which is recorded in Column Nos.20 and 21 of the post-mortem notes. The left ventricle lower half had suffered a stab injury admeasuring ¾″ x ½″ going deep into the chamber which was

corresponding to external injury no.4 indicated in Column No.17. The doctor has been cross-examined but nothing emerges to conclude that the deceased did not meet with a homicidal death. Considering the nature of injuries and number of injuries, we find that the Trial Court was justified in recording that the deceased met with a homicidal death and we confirm that finding.

7. Now comes the question as to who caused the homicidal injuries to the deceased. In this regard, there is evidence of Rohit Vinubhai at Exh.18. He was aged 15 years when he deposed before the court and aged 12 years when the incident occurred. His evidence clearly indicates that the witness, his younger brother and his mother (accused no.2) were staying with accused no.1 and not with the deceased who is father of the witness. Somehow, due to intervention of relatives and other socially leading persons, the witness says that he, his younger brother and his mother had started staying with the deceased in recent past of the incident. On the day of the incident, he, his younger brother and his parents had gone to Satadhar to fulfill a vow taken by his mother (accused no.2). After offering prayers

at Satadhar, accused no.2 suggested to go to Muni Ashram. While they were proceeding towards Muni Ashram, accused no.2 went to attend nature's call and the deceased and the witness and his brother waited for her to come back and at that time, accused no.1 approached them and picked up a quarrel with the deceased. There was a scuffle between the two and the deceased fell down. At that point of time, accused no.1 took out a knife and inflicted multiple knife blows on the deceased. Thereafter, accused no.1 dragged the deceased and threw him behind the bushes. In the meantime, accused no.2 came back and the two boys as well as both the accused persons returned home. The witness says that he and his brother were told by accused no.2 not to disclose about the occurrence to anyone or else accused no.1 would kill them all. In the evening, he went to his grandparents and his grandfather enquired of accused no.2 as to where was Vinubhai and she told him that he had gone to Surat. Thereafter, nothing happened.

7.1 On the other side, it appears that the dead body was noticed by first informant – Gordhanbhai Jivabhai and he gave an F.I.R. before police but the dead body was not identified by anyone despite all

attempts. It appears that the dead body was cremated after taking photographs. It appears that the dead body was identified by father of the deceased as the dead body being that of deceased Vinubhai.

8. Eye-witness Rohit has been cross-examined at length by the defence but he has remained unshaken. He has struck to his original version implicating accused no.1 directly with the incident and indicating circumstances in form of conduct of accused no.2 indicating her constructive involvement. The witness has remained unshaken and has answered all the questions appropriately. His presence at the place of incident cannot be doubted because it has come in evidence of Panchabhai Manjibhai (Exh.38) that he saw accused no.2 and two young boys with her in proximity of time and place of incident and in proximity of the dead body.

8.1 The result is that the evidence of Rohit as an eye-witness comes in a natural way and leaves no room to raise any doubt about the veracity of his evidence. What is stated by him is corroborated by medical evidence as the doctor says that the injuries were sufficient in ordinary course of nature to cause

death and that they were possible with the Muddamal knife. His presence is corroborated by evidence of Panchabhai. Thus, evidence of eye-witness Rohit clearly shows involvement of accused no.1 in the incident. Accused no.1 has suddenly emerged at the place of incident with a knife, had picked up a quarrel with the deceased and has caused fatal injuries with the knife.

8.1.1 Inaction on part of Rohit after the incident is but natural. He has seen his father being killed before his eyes. He is warned by his mother (accused no.2) that if he does not keep quiet, accused no.1 will not spare them. A young boy of 12 years of age cannot be ordinarily expected to be courageous enough to go against the warning. The inaction on his part is explained reasonably.

8.1.2 The deposition cannot be considered as a piece of imagination either because what he has stated is corroborated by other evidence.

8.2 When there is direct evidence, there is no need that the prosecution must establish motive but

here is a case where the prosecution has successfully led evidence as to motive. Evidence of Hansrajbhai Shamjibhai, father of the deceased and father-in-law of accused no.2 indicates that the relationship of the deceased and accused no.2 was sailing rough and was strained. It has also come in evidence that accused no.1 and accused no.2 had illicit relations. It has also come in evidence of Shambhubhai Ratnabhai (Exh.25) that accused no.1 and accused no.2 stayed together in the house of this witness as tenants under assumed names but he identifies them in the court as the persons who were staying together as husband and wife with two children. It has also come in evidence that in recent past of the incident, social forces prevailed upon accused no.2 and accused no.2 shifted to stay with the deceased abandoning company of accused no.1 and as such, obviously, the deceased was considered as a stumbling block in smooth running of their relationship which provided a motive to do away with the deceased to the appellants.

8.3 Accused no.1, therefore, had a motive to cause death of the deceased and he acted to fulfill that motive which is clear from the direct evidence

led by the prosecution.

8.4 Last but not the least, there is a strong circumstance leading to involvement of accused no.1. When he was arrested, a wristwatch was found from him which originally belonged to the deceased and that has been identified appropriately by the witnesses.

9. So far as accused no.2 is concerned, as discussed earlier, she had cultivated illicit relations with accused no.1 and had recently shifted to stay with the deceased husband. It has come in evidence of Rohit that she took the family to Satadhar on the ground of fulfillment of a vow and thereafter, she insisted for going to Muni Ashram and when the road towards Muni Ashram was isolated, she leaves her husband and children behind and accused no.1 suddenly emerges and attacks the deceased. It is true that possibility of this being a coincidence cannot be ruled out and thus, the possibility of accused no.2 being not involved in the incident also cannot be ruled out. But if we examine the evidence, we find that there is no scope to consider the situation as coincidental. If that was so, after the incident, accused no.2 would have raised shouts but

that has not been done by her. On the contrary, she leaves with the two children and accused no.1 towards home leaving the dead body behind. Even after going home, she does not disclose to anyone as to what had happened to her husband and on the contrary, she declares that her husband had gone to Surat directly from Satadhar. She has also insisted and prevailed upon her two minor children not to disclose to anyone about the occurrence. This cool mindedness on part of accused no.2 reflects that the occurrence did not come to her as a shock. She does not behave in a natural way and behaves in a manner to protect herself and accused no.1 against involvement in the incident and misleads the relatives. If the relations between accused no.2 and her husband – deceased Vinubhai were good or smooth, her reaction would have been different. Her conduct is, thus, unnatural and reflects her involvement in the incident, if not directly, constructively if it is seen in backdrop of the fact that accused no.2 was responsible for the trip to Satadhar and Muni Ashram, that she had illicit relation with accused no.1 and that the relationship was snapped in recent past under social compulsion.

10. Despite close scrutiny of the evidence of witnesses, we are unable to find any lacuna or any defect in the evidence to render the evidence doubtful. In our opinion, the evidence is well led by the prosecution. All panch witnesses have supported the prosecution case so also the other witnesses.

11. All these above factors lead us to conclude that the Trial Court was justified in recording conviction of both the appellants under Section 302 and Section 120-B read with Section 34 of I.P.C.

12. So far as conviction under Section 135 of Bombay Police Act is concerned, a knife was used by the accused no.1 in commission of the crime. The same knife is before us as a Muddamal and there is a notification prohibiting carrying and use of arms and ammunitions in stipulated area which was valid on the day of incident. The Trial Court was, therefore, justified in recording conviction under Section 135 of the Bombay Police Act.

13. We have gone through the judgment of the Trial Court and are in broad agreement with the conclusions arrived at by the Trial Court for recording conviction. No other contentions are raised. No other case law is cited. We do not find merit in the appeals. They both must fail and stand dismissed. The judgment and order dated 28th June, 2000 rendered by learned Additional Sessions Judge, Junagadh in Sessions Case No.125 of 1997 stands confirmed.

(A.L. Dave, J.)

(Sharad D. Dave, J.)

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